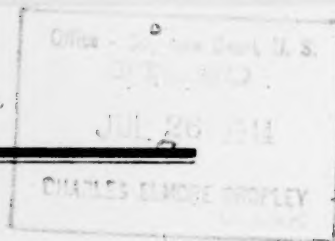




FILE COPY

No. 287



IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1943

JOHN BARR,

Petitioner,

v.

THE UNITED STATES.

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF CUSTOMS AND  
PATENT APPEALS**

✓  
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J. BRADLEY COLBURN,  
of Counsel.

July, 1944.



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**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF CUSTOMS AND  
PATENT APPEALS**

Petitioner John Barr prays that a writ of certiorari be issued to review the judgment of the United States Court of Customs and Patent Appeals in *United States v. John Barr*, Customs Appeal No. 4461, entered May 22, 1944, reversing a judgment of the United States Customs Court rendered July 30, 1943.

**Opinions Below**

The opinion of the trial court (R. pp. 112-119) is reported in C.D. 801, weekly "Treasury Decisions", August 12, 1943, Volume 79 No. 7, page 14. The opinion of the Court of Customs and Patent Appeals (R. pp. 120-129) is reported as C.A.D. 279, weekly "Treasury Decisions", July 6, 1944, Volume 79, No. 54, page 28.

## Jurisdiction

The judgment of the Court of Customs and Patent Appeals was entered on May 22, 1944 (R. p. 128). This petition is filed under Rules 42 and 38 of the Rules of this Court, pursuant to Section 195 of the Judicial Code as amended (U.S.C., Title 28, Section 308), providing that:

" \* \* \* in any case in which the judgment or decree of the Court of Customs and Patent Appeals is made final by the provisions of this title, it shall be competent for the Supreme Court, upon the application of either party, duly made as required by Section 350 of this title, to require, by certiorari or otherwise, such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court."

The statutes involved are Section 522 of the Tariff Act of 1930 (46 Stat. 739, U.S.C., Title 31, Section 372) and Section 514 of said Tariff Act of 1930 (46 Stat. 734, U.S.C., Title 19, Section 1514). These statutes are set forth in full in the appendix hereto (pages 10 to 12).

## Statement

Said Section 522 prescribes the statutory method for determination of values of foreign currency for assessment and collection of duties upon imported merchandise. Sub-section (c) thereof provides that conversion of foreign currency shall be made at a value measured by the buying rate in the New York market at noon on the day of exportation of the imported merchandise, where, as in this case, the proclaimed value of such currency varies by 5 per centum or more from such buying rate. Such buying rate is defined to be the buying rate for cable

transfers payable in the foreign currency to be converted; and is required to be determined by the Federal Reserve Bank of New York and certified daily to the Secretary of the Treasury, who in turn "shall make it public at such times and to such extent as he deems necessary" (App., p. 11).

Said Section 514 grants to importers and other interested parties the right to file protests against all decisions of Collectors of Customs, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable on imported merchandise and as to all exactions of whatever character within the jurisdiction of the Secretary of the Treasury (App., p. 11).

The Federal Reserve Bank had determined and certified one buying rate of exchange for pounds sterling under said Section 522 (c) until March 25, 1940 (Stipulation, paragraph 6—R., p. 76). Effective on that date, the Government of the United Kingdom, by specific regulation, required payment for whiskey, furs, tin, rubber, and jute, exported to the United States, to be made in either United States dollars or with pounds sterling purchased from the Bank of England or an authorized dealer of such Bank at the "official" rate of exchange fixed by the British Treasury (Stipulation, paragraph 4—R., p. 75; Exhibit 4—R., p. 100). Thereupon, beginning March 25, 1940, the Federal Reserve Bank determined there were two buying rates of exchange for pounds sterling for the purposes of said Section 522 (c) and accordingly certified such two rates to the Secretary of the Treasury (Stipulation, paragraph 8—R., p. 76; Exhibit 7—R., p. 108). One of such rates was denominated "free", which the Bank stated represented the buying rate it had theretofore certified, and the second and higher rate was called "official", the Bank stating this was the rate fixed by or on behalf of the British Treasury (Exhibit 6—R., p. 107).



Customs regulations in effect on the date of exportation of the involved woolens required buying rates certified by the Federal Reserve Bank to be furnished to customs officers by the Customs Information Exchange for purposes of conversion of currency (Stipulation, paragraph 11—R., p. 77). Pursuant to such regulations, the said Customs Information Exchange furnished daily to customs officers, to customs brokers, and to importers concerned a statement of buying rates certified by the Federal Reserve Bank. For the date of exportation of the involved woolens buying rates so furnished included for pounds sterling a “free” buying rate of \$3.475138 and an “official” buying rate of \$4.035 (Stipulation, paragraph 11—R., p. 77; Exhibit 8—R., p. 119). Each of these rates varied by more than 5 per centum from the value estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury for pounds sterling under Section 522 (a) and (b). (Stipulation, paragraph 9—R., p. 76).

The Secretary of the Treasury issued instructions to customs officers to use only the “official” buying rate in converting all invoices of merchandise made out in pounds sterling (Treasury Decision 50134, Treasury Decisions, Volume 75, page 370; 5 Federal Register, 1447).

Petitioner imported certain woolens from the United Kingdom which were purchased and paid for with pounds sterling exchange covered by the “free” rate certified by the Federal Reserve Bank. (Stipulation, paragraph 10, R., p. 76). On liquidation of the entry the Collector of Customs at New York, pursuant to said instructions of the Secretary, converted the invoice currency, pounds sterling, into currency of the United States for assessment and collection of tariff duties at the “official” rate of exchange, to wit, \$4.035. (Stipulation, paragraph 12—R., p. 77).

Petitioner filed protest against the Collector's action under Section 514 of the Tariff Act of 1930, claiming the currency of his invoice should have been converted at the "free" rate of exchange, which, on the day of exportation herein, was \$3.475138 (R., p. 5).

The Customs Court, in sustaining petitioner's protest, held that under prior decisions of this Court both the "free" and "official" buying rates for pounds sterling certified by the Federal Reserve Bank, were final and conclusive upon all parties; that under the facts of this case both such rates had separate application and must be given effect in accordance with the nature of the merchandise imported; that the certification by the Federal Reserve Bank left no discretion to the Secretary as to whether he shall accept the rates; and that, while the Secretary could direct Collectors to use either one of two rates certified, such instruction would not preclude judicial inquiry to determine which of the two rates certified was applicable (R., pp. 112-118).

The Court of Customs and Patent Appeals, in reversing this decision, held that, as the Secretary of the Treasury had published a single rate of exchange certified by the Bank, such publication on its face conformed to the law, was final and conclusive, and was not subject to judicial inquiry as to its correctness (R., p. 127). That court stated in the course of its opinion that Section 522 (c) contemplates the determination of a single buying rate of exchange (R., p. 127).

### **Questions Presented**

1. Are buying rates of exchange determined and certified by the Federal Reserve Bank under Section 522 (c) of the Tariff Act of 1930 binding and conclusive on all parties, including importers, customs officers, and the Secretary of the Treasury?

2. Does the Secretary of the Treasury possess any discretionary or other power under said Section 522 (c) to disregard or nullify buying rates determined and certified by the Federal Reserve Bank under that section?
3. Does the Federal Reserve Bank under said Section 522 (c) possess power to determine and certify two buying rates for pounds sterling under the facts of this case?
4. Does the Federal Reserve Bank possess power under said Section 522 (c) to determine and certify only one buying rate for pounds sterling and, if so, and that Bank having certified two rates, do the courts have power to pass upon the correctness of the selection of one of such rates by Collectors of Customs?
5. Does the fact that the Collector of Customs' action in using the "official" rate of exchange in the instant case was pursuant to instruction of the Secretary of the Treasury preclude the courts from determining the legality of the Collector's action?

### **Reasons for Granting Writ**

1. The record herein discloses a conflict between the Federal Reserve Bank of New York and the Secretary of the Treasury in interpretation of the respective powers and duties of each under Section 522 (c) of the Tariff Act of 1930. The Federal Reserve Bank has construed said statute to require or authorize it under the facts of the case at bar to certify more than one buying rate for cable transfers payable in pounds sterling when such exchange rates are applicable respectively to distinct classes of commodities in payment for which such cable transfers were to be employed. The Secretary of the Treasury construes said law to mean that only one rate may be lawfully certified under the statute and that if more than one shall have been certified, the final selection and de-

termination of a buying rate is delegated to him and that he may set aside or nullify any other rate previously determined and certified by the Federal Reserve Bank. Proper and efficient administration of Section 522 (c) and the public interest require that this conflict be resolved by exercise of this Court's power of review.

2. The case involves the assessment and collection of tariff duties on merchandise subject to ad valorem duties imported into the United States from the United Kingdom. The rule of the case would likewise affect imports into the United States from other foreign countries, including Canada, Argentina, Australia, Brazil, Uruguay, Newfoundland, and China. The questions involved are of general importance not only to foreign trade of the United States with the countries named, but to importers, American manufacturers, and the general public.

3. From 1789 until 1873, the values of foreign coins and currencies for customs computations were established by acts of Congress. From 1873 until 1894, statutes in force provided that conversion of foreign currency for duty purposes should be made on the basis of the pure metal value of the foreign coin in circulation in various foreign countries as expressed in United States money. Such values were required to be estimated by the Director of the Mint and to be proclaimed by the Secretary of the Treasury. The values so determined were held to be final and conclusive and not subject to collateral attack or judicial review. *Cramer v. Arthur*, 102 U. S. 612. *Hadden v. Merriell*, 115 U. S. 25. *United States v. Klingenberg*, 153 U. S. 22.

4. Section 25 of the Act of August 27, 1894 (28 Stat. 552) reenacted the provision for determination of pure metal value of foreign coin by the Director of the Mint and proclamation thereof by the Secretary of the Treasury and added a new provision which gave to the Secre-

tary of the Treasury authority to order reliquidation of any entry at a value different from the proclaimed value whenever satisfactory evidence was produced to him showing that the value in United States currency of the invoice money was at the time of certification ten per centum more or less than such proclaimed value. This proviso was recognized as vesting the Secretary of the Treasury with discretionary power. *United States v. Whitridge*, 197 U. S. 135; *30 Opinion Attorney General* 450.

5. Section 522 (c) of the Tariff Act of 1930 is a re-enactment of Section 522 (c) of the Tariff Act of 1922 (42 Stat. 974) and was first enacted as Section 403 of the Act of May 27, 1921 (42 Stat. 17). Said Section 403 of the Act of 1921 repealed the proviso to the Act of 1894 and introduced a wholly new method of currency conversion whereby Congress substituted for the determination of exchange values by the Secretary of the Treasury determination by the Federal Reserve Bank of New York of buying rates of exchange in the New York market at noon on the day of exportation.

The decision of the Court of Customs and Patent Appeals restores to the Secretary of the Treasury a discretionary power similar to that which he possessed under the proviso to the Act of 1894 and which Congress specifically took away.

6. Section 522 (c) of the Act of 1930, providing that the Secretary of the Treasury shall make public the buying rates determined by the Federal Reserve Bank, limits the power of the Secretary thereunder to the function of publication. The assertion by the Secretary of a right to choose the certified rates which shall be published and to direct which certified rates shall be used by customs officers, is the assertion of a power and discretion to determine values of foreign currency exchange in United States money which the statute does not confer upon him.

7. Under the decision of the Court of Customs and Patent Appeals the Secretary of the Treasury may set aside or refuse to give effect to buying rates of exchange determined by the Federal Reserve Bank in accordance with the statutory formula and no judicial review is possible of such action.

Section 514 of the Tariff Act of 1930 provides expressly for judicial review of all decisions of collectors including legality of all orders and findings entering into the same. The instruction of the Secretary of the Treasury is such an order. The decision of the Court of Customs and Patent Appeals limiting judicial review to determination whether the Secretary's order is on its face in conformity with the law, destroys this statutory judicial process established by Congress for tariff questions.

8. The decision of the Court of Customs and Patent Appeals is the first judicial construction of Section 522 (c) of the Tariff Act of 1930. That decision leaves in doubt not only the powers and duties of the Federal Reserve Bank and the Secretary of the Treasury thereunder, but also the right of importers to obtain judicial review of administrative action concerning importations into the United States. Questions involved are of general importance and have not been but should be passed upon by this Court.

### **Conclusion**

It is respectfully submitted that this petition for a writ of certiorari should be granted.

ALBERT MACC. BARNES,  
Attorney for Petitioner.

J. BRADLEY COLBURN,  
of Counsel.

July, 1944.



## Appendix

Act of June 17, 1930, c. 497, Title IV, Sec. 522, 46 Stat. 739 (U.S.C., Title 31, Sec. 372):

### —SEC. 522. CONVERSION OF CURRENCY.

(a) **VALUE OF FOREIGN COIN PROCLAIMED BY SECRETARY OF TREASURY.**—Section 25 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' as amended, is reenacted without change as follows:

'SEC. 25. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury quarterly on the 1st day of January, April, July, and October in each year.'

(b) **PROCLAIMED VALUE BASIS OF CONVERSION.**—For the purpose of the assessment and collection of duties upon merchandise imported into the United States on or after the day of the enactment of this Act, wherever it is necessary to convert foreign currency into currency of the United States, such conversion, except as provided in subdivision (c), shall be made at the values proclaimed by the Secretary of the Treasury under the provisions of Section 25 of such Act of August 27, 1894, as amended, for the quarter in which the merchandise was exported.

(c) **MARKET RATE WHEN NO PROCLAMATION.**—If no such value has been proclaimed, or if the value so proclaimed varies by 5 per centum or more from a value measured by the buying rate in the New York market at noon on the day of exportation, conversion shall be made at a value measured by such buying rate. If the date of exportation falls upon a Sunday or holiday, then the buying rate at noon on the last preceding business day shall be used. For the pur-

*Appendix.*

poses of this subdivision such buying rate shall be the buying rate for cable transfers payable in the foreign currency so to be converted; and shall be determined by the Federal Reserve Bank of New York and certified daily to the Secretary of the Treasury, who shall make it public at such times and to such extent as he deems necessary. In ascertaining such buying rate such Federal Reserve Bank may in its discretion (1) take into consideration the last ascertainable transactions and quotations, whether direct or through exchange of other currencies, and (2) if there is no market buying rate for such cable transfers, calculate such rate from actual transactions and quotations in demand or time bills of exchange."

Act of June 17, 1930, c. 497, Title IV, Sec. 514, 46 Stat. 734 (U.S.C.: Title 19, Sec. 1514):

"SEC. 514. PROTEST AGAINST COLLECTOR'S DECISIONS.

Except as provided in subdivision (b) of Section 516 of this Act (relating to protests by American manufacturers, producers, and wholesalers), all decisions of the Collector, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable, and as to all exactions of whatever character (within the jurisdiction of the Secretary of the Treasury), and his decisions excluding any merchandise from entry or delivery, under any provision of the customs laws, and his liquidation or reliquidation of any entry, or refusal to pay any claim for drawback, or his refusal to reliquidate any entry for a clerical error discovered within one year after the date of entry, or within sixty days after liquidation or reliquidation when such liquidation or reliquidation is made more than ten months after the date of entry, shall, upon the expiration of sixty days after the date of such liquidation, reliquidation, decision, or refusal, be final and conclusive upon all persons (including the United States and any officer thereof), unless the importer,



*Appendix.*

consignee, or agent of the person paying such charge or exaction, or filing such claim for drawback, or seeking such entry or delivery, shall, within sixty days after, but not before such liquidation, reliquidation, decision, or refusal, as the case may be, as well in cases of merchandise entered in bond as for consumption, file a protest in writing with the Collector setting forth distinctly and specifically, and in respect to each entry, payment, claim, decision, or refusal, the reasons for the objection thereto. The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the Collector upon any question not involved in such reliquidation."

